

**EXHIBIT "F"**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

CIVIL ACTION NO: 06-cv-01212-WYD-BNB

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.,  
a Colorado corporation,

Plaintiff,

vs.

SDMS, INC., a California corporation,  
THOMAS P. ANDERSON, an individual, and  
KENNETH PECUS, an individual,

Defendants.

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**JOINT MOTION TO ENTER STIPULATED PERMANENT INJUNCTION ORDER**

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Plaintiff Rocky Mountain Chocolate Factory (“RMCF” or “Plaintiff”) and Defendants SDMS, Inc., Thomas P. Anderson and, Kenneth Pecus (“Defendants”) (collectively with Plaintiff, the “Parties”) jointly move the Court to enter their Stipulated Permanent Injunction Order, and as grounds therefore, state as follows:

1. On or about October 20, 2006, RMCF filed a motion for preliminary injunction seeking to prohibit Defendants use of the RMCF marks and trade secrets.
2. The motion was heard on November 21, 2006 and November 29, 2006.
3. On December 8, 2006, the Court issued an Order, granting in part and, denying in part, Plaintiff’s motion (“December 8<sup>th</sup> Order”). At pages 14 and 15 of the December 8<sup>th</sup> Order, the

Court identified eight specific acts that Defendants were prohibited from engaging. (*See* December 8<sup>th</sup> Order, at 14-15, Doc. No. 56).

4. In the interest of justice and judicial economy, Defendants have conferred among themselves and have agreed that a permanent injunction incorporating the terms from the December 8<sup>th</sup> Order and set out at Paragraph 1 on pages 14-15 of that Order be entered. Specifically, the parties agree that the Court may enter an order permanently enjoining Defendants, their agents, and those people in active concert or participation with them from:

- a. Using the RMCF Marks or any trademark, service mark, logo or trade name that is confusingly similar to the RMCF Marks;
- b. Otherwise infringing RMCF Marks or using any similar designation, alone or in combination with any other components;
- c. Passing off any of their products or services as those of RMCF or its authorized franchisees;
- d. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of their businesses, products or services;
- e. Causing a likelihood of confusion or misunderstanding as to their affiliation, connection or association with RMCF and its franchisee or any of RMCF's products or services;
- f. Unfairly competing with RMCF or its franchisees in any manner;
- g. Competing with RMCF within 10 miles of the current location for a period of two years commencing on the date Defendants cease conducting business; and
- h. Using or misappropriating trade secrets and other confidential or proprietary information belonging to Plaintiff and using such information to their advantage and to the detriment of Plaintiff.

5. Further, the Parties agree that with the entry of the permanent injunction, it is appropriate that the bond RMCF posted to secure the preliminary injunction is no longer necessary and should be released.

6. Lastly, the Parties specifically acknowledge and agree, Defendants' agreement for entry of the permanent injunction is, in no way, an admission of wrong-doing, fault or liability on their part. Nor is it an acquiescence to the validity of RMCF's claims as presented in their October 20, 2006 Motion for Preliminary Injunction. It is simply a reflection of a change in circumstance wherein Defendants have no desire to continue in their current business and, therefore, there is no need to waste the Court's time pursuing the issue.

WHEREFORE the parties respectfully request that the Court enter the Stipulated Permanent Injunction Order in the form attached to this Motion.

Dated this 18 day of September 2007.

s/ Leonard H. MacPhee  
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